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WESTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

This document relates to:

Hunnicut v. Novartis Corp.,  
No. C02-792R

Riptoe, et al. v. Bayer Corp.,  
et al., No. C02-355R

Bickham, et al. v. American  
Home Products Corp., et al.,  
No. C02-907R

Myers, et al. v. Smithkline  
Beecham Corp., et al., No.  
C02-1170R

MDL NO. 1407

ORDER EXTENDING COURT'S  
JUNE 5, 2002 ORDER DENYING  
CLASS CERTIFICATION TO  
ADDITIONAL CASES



CV 02 00792 000000015

I. BACKGROUND

On June 5, 2002, the court issued an order denying certification in four nationwide and one Louisiana statewide personal injury class action cases.<sup>1</sup> The court noted that, to the extent

<sup>1</sup>See MDL 1407 Order Granting Defendants' Motion to Strike Class Allegations and Deny Class Certification in Toombs v. Bayer Corp., et al., No. C02-32R; Fife, et al. v. American Home Products Corp., et al., No. C01-2144R; Ricks, et al. v. American Homes Products Corp., et al., No. C01-1408R; Havard v. Smithkline Beecham, Inc., et al., No. C01-1645R; and Burbel, et al. v. Smithkline Beecham Corp., et al., No. C02-258R (June 5, 2002).

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1 applicable, it would extend its holding on certification to  
2 similar proposed classes transferred into the MDL. Defendants  
3 later requested that the court extend its June 2002 order denying  
4 certification to the four cases listed above. However, given the  
5 significance of a class certification decision, the court deter-  
6 mined that plaintiffs in these cases should be afforded an  
7 opportunity to address the court on this issue.

8 In an order issued on January 10, 2003, the court set a  
9 briefing schedule for the parties to respond to the question of  
10 whether the court's previous order denying certification in  
11 putative personal injury class actions should be extended to  
12 these cases. The court noted that if the plaintiffs found their  
13 proposed classes indistinguishable from those previously consid-  
14 ered by the court, they should inform the court that no briefing  
15 would be forthcoming.

## 16 II. DISCUSSION

17 In response to the court's January 2003 order, plaintiffs in  
18 Hunnicut v. Novartis Corp., No. C02-792R, indicated to the court  
19 their belief that their proposed class was indistinguishable from  
20 the classes previously considered. Plaintiffs in the other three  
21 cases at issue did not submit any briefing or otherwise contact  
22 the court in response to the court's order. As such, defendants  
23 now again seek an extension of the court's June 5, 2002 order  
24 denying certification to these cases.

25 "As soon as practicable after the commencement of an action  
26 brought as a class action, the court shall determine by order

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1 whether it is to be so maintained." Fed. R. Civ. P. 23(c)(1).  
2 The court's duty to promptly decide the question of class certif-  
3 ication remains true even where the parties themselves have not  
4 moved for a determination on the issue. See 5 James Wm. Moore et  
5 al., Moore's Federal Practice § 23.61[4] (3d ed. 2002).


6 The four cases at issue here, like the cases addressed in  
7 the court's June 2002 order, were all filed in Louisiana. These  
8 cases also similarly propose classes comprised of individuals who  
9 suffered injuries after ingesting PPA-containing products, and/or  
10 who may suffer such injuries, and/or who have sustained a justi-  
11 fiable fear of sustaining such injury in the future.

12 Given the concession of the plaintiffs in Hunnicut and the  
13 failure of plaintiffs in the three other cases to advise the  
14 court otherwise, the court concludes that these cases entail  
15 proposed classes indistinguishable from those proposed in the  
16 cases in which the court previously denied class certification.  
17 For this reason, the court finds that an extension of its June 5,  
18 2002 order denying certification to these cases would be appro-  
19 priate.

20 III. CONCLUSION

21 Defendants' motion to extend the court's June 5, 2002 order  
22 denying class certification to these cases is hereby GRANTED.

23 DATED at Seattle, Washington this <sup>24</sup> day of February, 2003.

24   
25 BARBARA JACOBS ROTHSTEIN  
26 UNITED STATES DISTRICT JUDGE